

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Orland Sylve,**  
Plaintiff,

v.

**Joseph Tenne**, in individual and  
representative capacity as trustee of  
The Tenne Family Trust dated  
September 16, 1997;  
**Miriam Tenne**, in individual and  
representative capacity as trustee of  
The Tenne Family Trust dated  
September 16, 1997;  
**Myt Home Health Care Inc.**, a  
California Corporation; and Does 1-  
10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Orland Sylve complains of Joseph Tenne, in individual and  
representative capacity as trustee of The Tenne Family Trust dated September  
16, 1997; Miriam Tenne, in individual and representative capacity as trustee  
of The Tenne Family Trust dated September 16, 1997; Myt Home Health

Care Inc., a California Corporation; and Does 1-10 (“Defendants”), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is a quadriplegic who cannot walk and who uses a wheelchair for mobility.

2. Defendant Joseph Tenne, in individual and representative capacity as trustee of The Tenne Family Trust dated September 16, 1997, owned the real property located at or about 1349 El Prado Avenue, Torrance, California, in December 2018.

3. Defendant Miriam Tenne, in individual and representative capacity as trustee of The Tenne Family Trust dated September 16, 1997, owned the real property located at or about 1349 El Prado Avenue, Torrance, California, in December 2018.

4. Defendant Joseph Tenne, in individual and representative capacity as trustee of The Tenne Family Trust dated September 16, 1997, owns the real property located at or about 1349 El Prado Avenue, Torrance, California, currently.

5. Defendant Miriam Tenne, in individual and representative capacity as trustee of The Tenne Family Trust dated September 16, 1997, owns the real property located at or about 1349 El Prado Avenue, Torrance, California, currently.

6. Defendant Myt Home Health Care Inc. owned South Bay Home Health Care located at or about 1349 El Prado Avenue, Torrance, California, in December 2018.

7. Defendant Myt Home Health Care Inc. owns South Bay Home Health Care located at or about 1349 El Prado Avenue, Torrance, California,

1 currently.

2 8. Plaintiff does not know the true names of Defendants, their business  
3 capacities, their ownership connection to the property and business, or their  
4 relative responsibilities in causing the access violations herein complained of,  
5 and alleges a joint venture and common enterprise by all such Defendants.  
6 Plaintiff is informed and believes that each of the Defendants herein,  
7 including Does 1 through 10, inclusive, is responsible in some capacity for the  
8 events herein alleged, or is a necessary party for obtaining appropriate relief.  
9 Plaintiff will seek leave to amend when the true names, capacities,  
10 connections, and responsibilities of the Defendants and Does 1 through 10,  
11 inclusive, are ascertained.

12  
13 **JURISDICTION & VENUE:**

14 9. The Court has subject matter jurisdiction over the action pursuant to 28  
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 10. Pursuant to supplemental jurisdiction, an attendant and related cause  
18 of action, arising from the same nucleus of operative facts and arising out of  
19 the same transactions, is also brought under California's Unruh Civil Rights  
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
22 founded on the fact that the real property which is the subject of this action is  
23 located in this district and that Plaintiff's cause of action arose in this district.

24  
25 **FACTUAL ALLEGATIONS:**

26 12. Plaintiff went to South Bay Home Health Care in December 2018 to  
27 shop.

28 13. South Bay Home Health Care is a facility open to the public, a place of

1 public accommodation, and a business establishment.

2 14. Transaction counters are one of the facilities, privileges, and advantages  
3 offered by Defendants to patrons of South Bay Home Health Care.

4 15. Unfortunately, the transaction counter is 42 inches in height. There is  
5 no lowered, 36 inch portion of counter for use by persons in wheelchairs.

6 16. Currently, the transaction counter at South Bay Home Health Care is  
7 more than 36 inches in height.

8 17. Currently, there is no lowered, 36 inch portion of the transaction  
9 counter at South Bay Home Health Care for use by persons in wheelchairs.

10 18. Defendants have failed to maintain in operable working condition those  
11 features of facilities and equipment that are required to be readily accessible to  
12 and usable by persons with disabilities at the Subject Property.

13 19. Plaintiff personally encountered these barriers.

14 20. This inaccessible facility denied the plaintiff full and equal access and  
15 caused him difficulty, discomfort, and embarrassment.

16 21. Plaintiff plans to return and patronize South Bay Home Health Care but  
17 is deterred from visiting until the defendants remove the barriers.

18 22. The defendants have failed to maintain in working and useable  
19 conditions those features required to provide ready access to persons with  
20 disabilities.

21 23. The barriers identified above are easily removed without much  
22 difficulty or expense. They are the types of barriers identified by the  
23 Department of Justice as presumably readily achievable to remove and, in fact,  
24 these barriers are readily achievable to remove. Moreover, there are numerous  
25 alternative accommodations that could be made to provide a greater level of  
26 access if complete removal were not achievable.

27 24. A common barrier removal project is modifying transaction counters to  
28 make a portion of the counter accessible. This is a simple construction task,

1 well within the capabilities of any general contractor. The task can be  
2 completed easily and for a modest price.

3 25. Plaintiff is deterred from returning and patronizing South Bay Home  
4 Health Care because of his knowledge of the barriers that exist. Plaintiff will,  
5 nonetheless, return to assess ongoing compliance with the ADA and will  
6 return to patronize South Bay Home Health Care as a customer once the  
7 barriers are removed.

8 26. Given the obvious and blatant nature of the barriers and violations  
9 alleged herein, the plaintiff alleges, on information and belief, that there are  
10 other violations and barriers on the site that relate to his disability. Plaintiff will  
11 amend the Complaint to provide proper notice regarding the scope of this  
12 lawsuit once he conducts a site inspection. However, please be on notice that  
13 the plaintiff seeks to have all barriers related to his disability remedied. See  
14 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
15 encounters one barrier at a site, he can sue to have all barriers that relate to his  
16 disability removed regardless of whether he personally encountered them).

17  
18 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
19 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
20 Defendants.) (42 U.S.C. section 12101, et seq.)

21 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
22 again herein, the allegations contained in all prior paragraphs of this  
23 complaint.

24 28. Under the ADA, it is an act of discrimination to fail to ensure that the  
25 privileges, advantages, accommodations, facilities, goods and services of any  
26 place of public accommodation is offered on a full and equal basis by anyone  
27 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
28 § 12182(a). Discrimination is defined, inter alia, as follows:

- 1 a. A failure to make reasonable modifications in policies, practices,  
2 or procedures, when such modifications are necessary to afford  
3 goods, services, facilities, privileges, advantages, or  
4 accommodations to individuals with disabilities, unless the  
5 accommodation would work a fundamental alteration of those  
6 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 7 b. A failure to remove architectural barriers where such removal is  
8 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
9 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
10 Appendix "D."
- 11 c. A failure to make alterations in such a manner that, to the  
12 maximum extent feasible, the altered portions of the facility are  
13 readily accessible to and usable by individuals with disabilities,  
14 including individuals who use wheelchairs or to ensure that, to the  
15 maximum extent feasible, the path of travel to the altered area and  
16 the bathrooms, telephones, and drinking fountains serving the  
17 altered area, are readily accessible to and usable by individuals  
18 with disabilities. 42 U.S.C. § 12183(a)(2).

19 29. Under the 2010 Standards, where the approach to the sales or service  
20 counter is a parallel approach, such as in this case, there must be a portion of  
21 the sales counter that is no higher than 36 inches above the floor and 36 inches  
22 in width and must extend the same depth as the rest of the sales or service  
23 counter top. 2010 Standards § 904.4 & 904.4.1.

24 30. Here, no such accessible counter has been provided in violation of the  
25 ADA.

26 31. The Safe Harbor provisions of the 2010 Standards are not applicable  
27 here because the conditions challenged in this lawsuit do not comply with the  
28 1991 Standards.

1 32. A public accommodation must maintain in operable working condition  
2 those features of its facilities and equipment that are required to be readily  
3 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

4 33. Here, the failure to ensure that the accessible facilities were available  
5 and ready to be used by the plaintiff is a violation of the law.

6 34. Given its location and options, plaintiff will continue to desire to  
7 patronize South Bay Home Health Care but he has been and will continue to  
8 be discriminated against due to the lack of accessible facilities and, therefore,  
9 seeks injunctive relief to remove the barriers.

10  
11 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
12 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
13 Code § 51-53.)

14 35. Plaintiff repleads and incorporates by reference, as if fully set forth  
15 again herein, the allegations contained in all prior paragraphs of this  
16 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
17 that persons with disabilities are entitled to full and equal accommodations,  
18 advantages, facilities, privileges, or services in all business establishment of  
19 every kind whatsoever within the jurisdiction of the State of California. Cal.  
20 Civ. Code § 51(b).

21 36. The Unruh Act provides that a violation of the ADA is a violation of the  
22 Unruh Act. Cal. Civ. Code, § 51(f).

23 37. Defendants’ acts and omissions, as herein alleged, have violated the  
24 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
25 rights to full and equal use of the accommodations, advantages, facilities,  
26 privileges, or services offered.

27 38. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
28 discomfort or embarrassment for the plaintiff, the defendants are also each

1 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
2 (c).)

3  
4 **PRAYER:**

5 Wherefore, Plaintiff prays that this Court award damages and provide  
6 relief as follows:

7 1. For injunctive relief, compelling Defendants to comply with the  
8 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
9 plaintiff is not invoking section 55 of the California Civil Code and is not  
10 seeking injunctive relief under the Disabled Persons Act at all.

11 2. Damages under the Unruh Civil Rights Act, which provides for actual  
12 damages and a statutory minimum of \$4,000.

13 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
14 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

15  
16 Dated: December 14, 2018 CENTER FOR DISABILITY ACCESS

17  
18  
19 By:



20 \_\_\_\_\_  
21 Chris Carson, Esq.  
22 Attorney for plaintiff  
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